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December 20, 2004

BY HAND

Beth N. Mizuno, Esq.
Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

Re: MUR 5611

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2004 DEC 21 A 11: 22

Dear Ms. Mizuno:

On behalf of the Missouri Democratic State Committee, and Rod Anderson, as Treasurer (collectively, the "Committee"), I write in response to the Commission's reason to believe finding and proposed conciliation agreement in the above-referenced matter. Pursuant to 11 C.F.R. 111.18(d), the Committee desires to enter into negotiations directed towards reaching a conciliation agreement.

BACKGROUND

Since the 2000 election cycle, and especially recently, the Committee has taken steps to correct its compliance policies and procedures. Having experienced almost complete turnover among staff since 2000, the Committee has recently retained an experienced compliance professional as a consultant to prepare reports and review its compliance functions.

The Committee acknowledges that its policies and procedures with respect to compliance were inadequate during the 2000 election cycle, and that lapses occurred as a result. The Committee particularly regrets the consequences that these lapses have had for contributors and supporters, who relied upon the Committee to inform them of the manner in which their contributions would be used, and who in some cases intended to support the Committee's nonfederal activities only to have their funds treated differently.

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The Committee wishes to take sole and full responsibility for whatever violations occurred.

While the Commission has audited the Committee on more than one occasion, the facts here do not support an inference that the alleged violations resulted from indifference to audit findings. The Commission did not issue its report from its audit of the 1996 election cycle until early 2000. Moreover, the findings in that audit were different from those that yielded this matter. To note one especially significant difference, the manner in which the Committee reported joint federal/nonfederal contributions did not generate a finding in the final audit report for the 1996 cycle.

DISCUSSION

The Commission's reason-to-believe finding was predicated entirely on the Final Audit Report issued in connection with the Committee's 2000 election cycle activities. Thus, the bulk of the facts and law that the Committee views as relevant to this matter can be found in the Committee's September 22, 2003, response to the Commission's Interim Audit Report.

Nonetheless, the violations asserted in the Final Audit Report warrant some additional examination.

A. Reporting of Joint Contributions

The Committee vigorously disputes the charge that it incorrectly reported joint contributions. In the Final Audit Report, and now in the reason-to-believe finding, the Commission takes the position that, when depositing a joint federal/nonfederal contribution initially into the federal account and transferring the nonfederal portion to the nonfederal account, the Committee must: (a) disclose the gross amount of the receipt on Schedule A; (b) disclose the amount transferred to the nonfederal account on Schedule A as a memo entry; and (c) and disclose the transfer to the nonfederal account on Schedule B as a memo entry. *See* Final Audit Report at 11.

This was not the law as it was understood during 1999 and 2000. In an advisory opinion issued the year *after* the events in this matter transpired – and the only one on the subject at that time – the Commission acknowledged that its rules "do not specifically address the

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reporting of contribution checks where the proceeds are intended to be split between Federal and non-Federal accounts." Advisory Opinion 2001-17. The Final Audit Report referred incorrectly to what it called the Committee's "reliance on AO 2001-17". Final Audit Report at 10. In fact, the Final Audit Report mistook the Committee's point. The Committee's point was that nothing on the public record at the time would have alerted it to the specific reporting procedures outlined by the Final Audit Report, and that, under these circumstances, it was unfair to find that the Committee had committed any violations.¹

Had these reporting procedures been the law, one must assume that they would have been discussed in the audit report that was issued in early 2000 regarding the Committee's 1996 cycle activities. However, the manner in which the Committee reported its joint contributions were not discussed at all. The Commission disputed only the timeliness of some of the transfers, and the notice provided to donors. *See Report of the Audit Division on Missouri Democratic State Committee (1995-1996 Election Cycle)*, at 3-5. *See also Conciliation Agreement, MUR 5150 (Mar. 27, 2001)*.

B. Receipt of Prohibited Contributions

The Committee does not dispute that it did not employ adequate procedures to review and screen for prohibited contributions.

¹ For additional support, the Final Audit Report cites MUR 4961, in which the Democratic National Committee was a respondent. However, the conciliation agreement in MUR 4961 was not adopted until July 20, 2001 – again, during the year following the events in this matter. Moreover, in MUR 4961, the DNC vigorously disputed the Commission's finding on the reporting issue. *See Conciliation Agreement, MUR 4961*, at 7. In fact, Advisory Opinion 2001-17 arose from the conciliation agreement in MUR 4961: "In connection with the Committee's contention that the requirements are not clear regarding the reporting of single-check contributions split between the federal and non-federal accounts, the Committee may request from the Commission an Advisory Opinion regarding the reporting of such single-check contributions received in the future." *Id.*

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Thus, the actual amount in dispute can be no more than \$169,500. Yet the Committee would respectfully suggest that this figure is an overstatement also. It includes \$74,500 in contributions from limited liability companies from which the Committee did not obtain affirmations of eligibility. *See* 11 C.F.R. 110.1(g)(5). These contributions were made only months after the Commission changed its LLC rules, which, as noted above, had previously allowed Missouri LLCs to give freely. *See* Advisory Opinion 1997-17. The unique time at which these contributions were made warrants consideration as a mitigating factor.²

The figure also includes a \$60,000 check from a labor organization that was expressly designated for the nonfederal account, mistakenly deposited into the federal account, and promptly transferred when the error was discovered. *See* Final Audit Report at 14-15. There is no basis to suggest that this transaction was anything other than an error that the Committee promptly and conscientiously corrected.

This leaves \$35,000 in contributions that appeared to have been from prohibited sources. Yet in many cases, the checks were not absolutely prohibited on their face. As to these

² The Committee continues to seek information the original LLC donors that would determine their tax status during calendar year 2000. The passage of time since the original transactions has made it difficult to obtain this information. At this writing, however, the Committee lacks any information to suggest that any of the LLC donors were taxed as corporations. *See* 11 C.F.R. 110.1(g)(3).

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checks, the worst that can be said of the Committee is that it did not use "best efforts to determine the legality of the contribution." *See* 11 C.F.R. 103.3(b)(1).

C. Misstatement of Financial Activity and Unreported Debts

During the audit, the Committee acknowledged that there were discrepancies in reported receipts and disbursements.

The Committee, in fact, filed amendments to correct acknowledged misstatements, as well as to itemize debts that were identified by the Interim Audit Report. *See* Letter from Brian G. Svoboda, Counsel to the Committee, to Joseph F. Stoltz, at 4, 5 (Sept. 22, 2003).

CONCLUSION

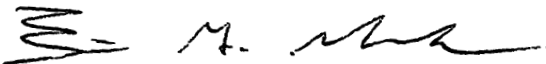
As discussed above, the Committee believes that conciliation is the appropriate way to resolve this matter.

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Very truly yours,

A handwritten signature in black ink, appearing to read "B. G. Svoboda", with a stylized flourish at the end.

Brian G. Svoboda

Counsel to the Missouri Democratic State Committee

Enclosures

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ATTACHMENT A

25044122068

THE LAKIN LAW FIRM
GENERAL ACCOUNT
P.O. BOX 229
301 EVANS
WOOD RIVER, IL 62095

UNION PLANTERS BANK
UPDIRECT
70-138/810

148898
148898

Five Thousand & No/100 Dollars

PAY
TO THE
ORDER OF

DATE

CONTROL NO.

AMOUNT

03/30/00

\$*****5000.00

MISSOURI DEMOCRATIC PARTY

Brad Lakin
AUTHORIZED SIGNATURE

* need partnership letter of designation

THE LAKIN LAW FIRM
GENERAL ACCOUNT

148898

DATE	DESCRIPTION	AMOUNT	DEDUCTION	NET AMOUNT
MISSOURI DEMOCRATIC PARTY 03/30/00 3/30/00	political donations			5000.00
DATE	CONTROL NUMBER	TOTALS ➡		

Missouri State Democratic Committee

www.missouridems.org

P.O. Box 719 419 East High Street Jefferson City, Missouri 65102 P: 573.636.5241 F: 573.634.8176

1. _____ Please designate our contribution as follows:

Check number 148898, dated 3/30/2000, drawn on the account of The Lakin Law Firm, in the amount of \$5,000

Partner 1,

L. Thomas Lakin \$5,000
Name (Please Print) Amount

[Signature]
Signature

8/12/00
Date

Partner 2,

Name (Please Print) Amount

Signature

Date

(For additional partners, please include in a separate memo.)

or

2. _____ The Lakin Law Firm is neither a partnership or nor an LLC with partnership tax status. I authorize the Missouri State Democratic Committee to transfer these funds to your nonfederal account to be used for state and local elections.

Joe Carmichael
Chairman

Sen. Paula J. Carter
Vice-Chair

Donna Knight
Treasurer

Pat Hughes
Secretary

Roy Temple
Executive Director

Contributions or gifts to the Missouri State Democratic Committee are not tax deductible. Paid for by the Missouri State Democratic Committee, Donna Knight, Treasurer

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ATTACHMENT B

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TATLOW, GUMP & FAIELLA, LLC
LAW OFFICES
110 N. FIFTH ST. 263-3100
MOBERLY, MO 65270

43027

80-74/815

DATE June 30, 2000

PAY
TO THE
ORDER OF Missouri Democratic Party \$ 500.00

Five hundred & no/100 DOLLARS



City Bank
P.O. Box 160
Moberly, MO 65270
Member FDIC

FOR Political Contribution - Gaw for MO

A handwritten signature in dark ink, appearing to be "J. L. [unclear]".

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